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DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-200450

DATE: June 18, 1981

MATTER OF: Jon D. Lemmon - Request for Waiver
of Erroneous Overpayment - Post Differential

DIGEST: An employee received an erroneous payment of a post allowance through administrative error which was reflected on his biweekly earnings and leave statements. The debt may not be waived since he knew or should have known from the substantial increase in pay and from an examination of his earnings and leave statement that an error had been made. Such actual or presumptive knowledge on the employee's part carries with it an obligation to bring the matter to the attention of the appropriate official and to return the excess sum or set it aside for refund at such time as the accounting error is corrected.

The issue presented in this case upon an appeal of our Claims Group's denial of a request for waiver is whether waiver of an erroneous payment of a Post Differential Allowance may be granted under 5 U.S.C. § 5584 (1976), in the circumstances described. The answer is no since we find that the recipient of the overpayment should have known or with reasonable diligence could have observed from an examination of his earnings and leave statements that he had been paid an allowance to which he was not entitled and should have been prepared to refund the amount erroneously paid.

Mr. Jon D. Lemmon, an overseas employee of the Department of the Army, Frankfurt Military Community, was assigned to a teaching position at the Hanau High School, Hanau, Germany. It is administratively reported that an erroneous payment occurred when the employee's name was inadvertently placed in a computer program as being authorized a post allowance from the pay period ending March 19, 1977, through October 15,

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1977. However, post allowance was not authorized for civilian employees until March 1978.

Although Mr. Lemmon was entitled to a living quarters allowance (LQA), the payments he received during the above period were in excess of his LQA entitlements. The total amount of the overpayment was \$2,179.94. The payments occurred every 2 weeks, with the amounts ranging from \$126.70 to \$227.71 in excess of the LQA to which he was entitled. The correct amount of his LQA during the period in question started at \$141.96 and was increased to \$159.74 in 4 steps. The overpayments were not reported by Mr. Lemmon, and he was officially notified of the overpayments and the extent of the debt by letter dated December 15, 1977. Mr. Lemmon claims that he was not aware of the overpayments since his pay statements have involved a considerable amount of confusion, caused at least partly from innumerable errors that they contained. Mr. Lemmon notes that from the period of August 21, 1976, through November 12, 1977, he was able to identify fifty mistakes in his pay. Mr. Lemmon also points to the fact that as a teacher, sports coach, and director of athletic programs at his assigned school, he maintains a very demanding schedule with long hours which impacts on his ability to study his pay statements. Although Mr. Lemmon acknowledges that he noticed an increase in the amount of his pay for the period ending March 19, 1977, he explains that he understood this increase to be the result of "pay for coaching basketball or the annual teachers retroactive pay. As you look at the pay statements the coding for the pay is very inaccurate and confusing. With the dropping of the dollar in relation to the mark our housing allowance was in constant change."

Section 5584 of title 5, United States Code (1976), authorizes the Comptroller General to waive certain claims--

"* * * the collection of which would be against equity and good conscience and not in the best interests of the United States * * *."

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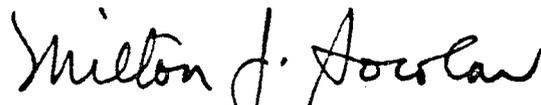
However, the law also provides that the Comptroller General may not exercise that waiver authority--:

"If, in his opinion, there exists, in connection with the claim, an indication of * * * fault, or lack of good faith on the part of the employee * * *."

Fault exists if in light of all the facts it is administratively determined that the employee should have known that an error existed and should have taken action to have it corrected. The standard is whether a reasonable person should have been aware that he was receiving payment in excess of his proper entitlements. B-165663, June 11, 1969.

Each employee receives and has an obligation to examine the biweekly leave and earnings statement to determine its correctness. Arthur Weiner, B-184480, May 20, 1976. Mr. Lemmon apparently did not do this. The amount of overpayment for each 2-week period was in excess of \$125, and for some pay periods in excess of \$215, and with reasonable diligence should have been observed by Mr. Lemmon. Although there was no specific code on the leave and earnings statement designed as a foreign quarters allowance, it does show a nontaxable item of a substantial amount which, upon examination and inquiry, would have revealed the erroneous payment. Therefore, we cannot conclude that he was not without fault in the matter for not examining his leave and earnings statements and reporting the indicated overpayments. See Lee A. Kirsch, B-200295, April 28, 1981. The fact that Mr. Lemmon may have to suffer a financial hardship in repayment of the amount is not sufficient to authorize waiver. Edward R. Hollyfield, B-195252, July 19, 1979.

Accordingly, the action taken by our Claims Group denying waiver is sustained.


Acting Comptroller General
of the United States